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ABSTRACT

Scientific investigations of the relationship between race and rape have been flawed by the acceptance of official statistics and have been influenced by prevailing myths about rape and race. This paper proposes a theoretical framework for understanding rape and race. The thesis is presented that only the black victim of sexual assault is viewed by society as a legitimate victim. The society is able to neutralize such assaults against black victims by denying the responsibility of the perpetrator, denying that the black woman was injured by the assault, and denying that such assaults constitute victimization of black women. Historically, this has been supported by the legal system which treats white and black rape victims differently. Public reports, serious treatment in court, criminal charges, and court sentences are less common when black women are raped. Further research is recommended to explore the impact of slavery on the victimization of black females and the influence of the patriarchal system in legitimizing the victimization of all women. New models must be developed for understanding all categories of race and rape. Statistical information and references are provided. (Author/VM)

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RACE AND RAPE: THE BLACK WOMAN AS LEGITIMATE VICTIM *

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RACE AND RAPE: THE BLACK WOMAN AS LEGITIMATE VICTIM

ABSTRACT

Scientific investigations of the relationship of race and rape have been seriously flawed by acceptance of official statistics and have been influenced by prevailing myths about rape and race. This paper proposes a theoretical framework for understanding rape and race. The thesis is presented that the black victim of sexual assault is viewed by society as a legitimate victim. An examination of the views of black sexuality and the historical lack of protection of the black female by either the laws or the societal response support this thesis.

INTRODUCTION

There have been few scientific examinations of the relationship of rape and race in the recent decade although research and writing on the topic of rape in general has increased geometrically. Perhaps the legacy of lynching of blacks accused of the rape of white women and a history of discrimination in applying judicial sanctions[1] [2] resulted in the withdrawal of attention from this subject. The few academic investigations which have occurred have been flawed by acceptance of official statistics regarding race and rape or have come under the influence of prevailing myths about rape and race. This paper will propose a theoretical framework for understanding rape and race.

Statistics on rape and race:

There are many difficulties with establishing valid measures of the actual incidence of sexual assault. The reasons for this have been discussed in depth elsewhere.[3] [4] [5] Estimates of the percentage of rape cases which are reported and show up in official statistics range from 10% to 40%. Most researchers support the assumption that, at the least, more cases go unreported than are reported. It is also apparent that the sample of rapes reported to the law enforcement officials is not an unbiased and representative one.[6] Where race is concerned the questions about the validity of the data increase because factors which influence reporting may be different for blacks and whites.[7] [8]

Most criminological research on rape reveals that rape is primarily an intraracial phenomenon.[9] [10] [11] In virtually all studies we find that blacks represent a disproportionate share of both victims and offenders in

comparison to their representation in the population. In the victimization surveys 37% of the rapes were perpetrated against black females.[12] The Uniform Crime Reports[13] reveal that 48.9% of those arrested for rape in 1983 were black. Recently some research has focused on a reported increased rate of interracial rape where the offender is black and the victim is white.[14] LaFree presents a table summarizing the frequencies of interracial rape from 1958-1977 reported in studies based on crimes known to the police or victimization surveys. He concludes that reported rapes of white women by black men have increased during this period.[15] But LaFree makes a serious error in leaping from information on reported rapes to discussion of the reasons for increases in actual rates of black on white interracial rape. One does not know whether the reported increase reflects a true increase or differences in research design, regional variations, or changes in reporting practices. For example, black women may be less likely to report rape by white men or both black and white women may be less likely to report rape by white men.

Lynn Curtis[16] contends that black women may be less likely to report rape by white men and that the rate of rape of black women by white men is probably higher than official statistics reveal. La Free challenges this notion, claiming that the national victimization data, which use a random sample household survey technique, reveal a low rate of white on black rape.[17] However, Gove, Hughes and Geerken[18] question the validity of drawing conclusions about rape based on the Bureau of the Census Victimization Surveys.[19] In victimization surveys few rape cases make it into the sample. In fact, in the actual interview, rape is never specifically mentioned and the probes used to are inadequate to explore

this subject. Gove et. al. conclude that "victimization surveys appear to be unable to measure rape adequately." [30] These LEAA victimization surveys may be less susceptible to nonreport biases then police records, for example, but La Free too easily dismisses concern about black women underreporting interracial rape. Even the authors of the LEAA analysis of Rape Victimization in 26 cities go to great lengths to point out that although surveys are not hindered by police recording bias, "the extent to which black and other minority women are more reluctant in survey interviews to report inter-racial rapes than they are to report intra-racial rapes remains an open question."[31]

Clarification of these issues will come from sensitive random sample surveys. The faith in current official statistics is supported by and supports myths about rape and race.

Prevailing myths about rape and race:

According to Angela Davis in Women, Race and Class,[32] recent scientific investigations "suffer (under) the influence of racist ideology," an ideology which facilitates the portrayal of the rapist as black.[33]

One of the works that Davis critiques for its treatment of rape and race is Brownmiller's Against Our Will: Men, Women and Rape.[34] Davis claims this book played a "part in the resuscitation of the old racist myth of the black rapist." [35] Davis chronicles how books by Brownmiller, Russell,[36] and others focus on rape by men of color and how one author, Mackellar,[37] erroneously claims that 90% of all reported rapes are committed by black men.

More recently, Bart and O'Brien [28] in an important work on resisting rape contribute to the myth of the brutal black rapist and in so doing minimize the rape of women by white men. Generalizing from a nonrandom sample, the authors state that some of the most distressing cases were those of black women raped by black men. These women, they report, were more likely to be attacked with weapons and subjected to repeated acts of sexual violence.[29] While Bart and O'Brien do recognize that the black women included in their study were more willing than white women are to report rapes by black men, they uses this significant information to justify increased reporting of rapes committed by black men,[30] not to question the validity of comparing information about black on black rapes to other victim-offender racial configurations. They argues for increased attention to black on black rape contending that Davis and others in the "male dominated left" focus on the rape of Blacks by whites, excluding rape by black males due to embarrassment because the "proletariat are not supposed to be the oppressors."[31] But they do not explain that the reported rapes of black women by black men may be a biased sample of the most brutal rapes which are more likely to be reported and do not question if rape by white men is less likely to be reported.

Toward an explanation of race and rape:

It appears that to explain rape Bart subscribes, as Brownmiller did, to a subculture of violence theory. This theory is particularly geared to an explanation of rape committed by black men. According to this theory, developed by Wolfgang and Ferracuti,[32] the subculture of violence encourages and even requires the use of physical aggression as a

demonstration of masculinity and toughness. For lower class male youth the way to be a man may be through "machismo" or hypermasculinity, of which sexual aggression is a part.[33] Support for this explanation of rape rests in large part on acceptance of official statistics on rape which depict it as a crime primarily committed by those of low socioeconomic status, particularly blacks.

If, however, sexual assault occurs with great frequency, in a wide variety of forms, and in all socioeconomic groups and strata of society and does not always involve other physical violence,[34] a phenomena which has a broad cultural basis may have been misclassified as subcultural. Behaviors which have been seen as being rooted in a subculture of violence may have a stronger relationship to the larger social system. A social theory of sexual assault rests on the premise that sexual behavior (including rape), is a sociological and cultural force.[35] Sexual assault can then best be understood within a framework of culturally induced values --- normative systems. Sexual behaviors are a reflection of the underlying values and consequent norms of the society. They are part of the customs and may be symbolic acts whose meanings, for the members of the culture, can be interpreted. A cultural theory of sexual assault holds that there is an underlying value system which encourages and promotes sexually assaultive behavior in certain situations and that members of the culture support norms which uphold such behavior.

Studies of patterns of sexually assaultive behavior indicate that there are norms governing sexual assault.[36] There are reoccurring situations in a culture which permit or encourage rape, for example, during military victory, as discussed by Brownmiller.[37] In some cultures

sexual assault occurs in ceremonial circumstances.[38] [39] In certain circumstances, with certain victims, and in certain situations sexual assault is called for by some cultures. So it may be that sexual assault of blacks and whites in our society is guided by the norms governing sexual interaction between blacks and whites in everyday life.

This relationship between social structure, culture and sexual assault has not been clearly articulated in the literature. Research by Sanday reveals the benefits in pursuing this area. She has studied the incidence, meaning and function of rape in a cross-cultural sample of tribal societies. her data suggest that, "rape is a part of a cultural configuration which includes interpersonal violence, male dominance and sexual separation."[40]

An examination of rape and race may benefit from an attempt to understand the cultural configuration which encourages and discourages rape of black and white women by black and white men. To best understand the social and sexual relations of blacks and whites one must begin with an examination of sexual relations during the time of black African slavery in the U.S., in the 18th and 19th centuries. The condition of slavery imposed on blacks in the United States clearly had a significant impact on the norms surrounding relations between the races. According to Berry and Blassingame,[41]

> Slavery... was the major determinant of American race relations... (it) led to Jim Crow laws... to discrimination in the dispensation of justice, to myths about interracial sex, and to economic and political oppression.

In regard to black men we shall see how contacts with white females were perceived as threatening to the prevailing social order and were viewed as sexual assaults. "For women," as Gerder Lerner has shown in her

work on "Black Women in the United States,"[42] and in The Creation of Patriarchy,[43] "enslavement inevitably also meant having to perform sexual services for their masters or for those whom their masters might designate in their stead." Enslavement, for women, means sexual exploitation. As a review of the history of slavery in the U.S. will show sexual assault was very much a part of the black female slaves experience."[44]

The institution of slavery, therefore, can provide a cultural context for understanding black-white sexual relations and the incidence and nature of sexual assault of black females in the U.S. The black female came to be viewed as a legitimate (culturally approved) victim of sexual assault.

THE BLACK FEMALE AS LEGITIMATE VICTIM

Weis and Borges[45] develop a theory of the legitimate victim of sexual assault. They contend that "certain groups of individuals are viewed as 'legitimate' victims having diminished justification for complaint if they are victimized."[46] This approach to understanding sexual assault can be helpful in understanding the rape of black women in the U.S.

Weis and Borges rely heavily on Sykes and Matza's "techniques of neutralization"[47] to develop their theory of the legitimate victim. Sykes and Matza assert that rule breakers rely not on subcultural value systems but take from the dominant culture interpretations and definitions of their situations which permit and prepare them for committing a delinquent act and for justifying their actions: in effect neutralizing them. According to Sykes and Matza:

> (These) definitions of the situation represent tangential or glancing blows at the dominant normative system rather than the

creation of an opposing ideology and they are extensions of patterns of thought prevalent in society rather than something created de novo."

That is, techniques of neutralization do not represent values or norms of a contraculture but rather the extension of dominant group values and patterns of behavior. Sykes and Matza divide the "techniques of neutralization" into five major types. Following the lead of Weis and Borges the first three types are utilized for analysis here:

A. denial of responsibility,
B. denial of injury, and
C. denial of the victim,

It is important to note that these three definitions of the situation set the tone not only for the actor (the rapist) to prepare to commit a rape and justify it, but also influence the social and legal reaction to rape. That is, the definitions of the situation are used not only by the rapist to justify behavior but by the society to excuse it. These definitions can be applied to all rape incidents and may be used to explain the particular status of the rape victim (black or white) in society. How the techniques of neutralization are particularly important to explaining the sexual assault of black females and the social response to black rape victims is discussed here.

A. The Denial of Responsibility

Denial of responsibility refers to redefining the alleged perpetrator as lacking responsibility. This denial of responsibility can be based on the claim that the deviant behavior was an accident or was actually forced on the actor, or the claim that outside forces drove him to it. Here, the individual and the society views the "offender" as "acted upon rather than acting." In regard to rape, this neutralizing technique may be based

on the notion that a man cannot help himself in certain circumstances (i.e., he cannot control his impulses). In essence, the offender is no longer seen as responsible and is converted into the victim.

As this applies to rape of black females, based on the tradition set forth in this paper, the situation in which a man rapes a black woman may be redefined into one where it is viewed that the victim provoked the rape by her sexual nature, accessibility, and "moral looseness." Thereby, the fact of rape is denied due to the irresistible impulse of the rapist which was caused by what is perceived as the black woman's provocation.

B. The Denial of Injury

This technique for neutralizing rape does not involve the denial of force but the denial of harm to the victim or to society. This denial results in a decision that the incident alleged by the victim shall not be called "rape." This technique of neutralization involves redefinition of the situation to convert the deviant act into one which is defined as not harmful to anyone.

The denial of injury justification revolves around these themes:

1. sex in any form is always pleasant
2. if a woman has had previous sexual experience she will want more
3. women like to be forced in sexual encounters

While these themes can be used to neutralize rape of women of any race they have increased salience for complaints of rape made by black women.

If black women are viewed as always desirous of sex, then sex in any form will be viewed as acceptable to black women and the charge of rape denied. The belief that black women are unchaste, more sexually promiscuous and sexually active at an earlier age than whites has its

roots in slavery.[80] [81] This belief contributes to the denial of injury to the victim: "She has had sex before, this time could not have been so bad for a non-virgin."

Also contributing to the denial of injury where black women are victimized is the widespread belief that the penis of the black man is larger than the white man's and that a black woman who has had sex with men of her race is accustomed to and/or desirous of pain in sexual encounters.[82] The notion of de minimis[83] enters here both specifically and generally. Specifically the individual is not seen as a victim and injury is not viewed as serious. And, the general injury to society is denied and seen as minimal when a black woman is raped because of her social status.

C. The Denial of the Victim

When convinced that the victim deserved her victimization the social response to a rape allegation will be to neutralize it or label it false. When denial of the victim is operating, it is she, the victim, who is transformed into the wrong-doer.

The victim is seen as deserving her victimization when it is believed that:

1. she provoked it,

2. she warranted it because of her bad character or nature.

This area has much overlap with denial of responsibility. Provocation as it relates to perception of black females has been discussed. There is a belief that the woman got what she asked for by her behavior.

The reputation of the complainant is critical to the way in which the situation will be defined. If black women are viewed as impure, spoiled property and degraded there will not only be a denial of injury but a denial that they are victims. Black women may be viewed as fair game and warranting sexual advance and also as the aggressors in sexual activity.[84] Simply put, if the black woman is viewed as vulgar in her nature, she will be seen as having precipitated[85] it and no seriousness will be attached to her resistance and her victimization will be denied.

THE SOCIAL-SEXUAL AND LEGAL CONTEXT OF RACE AND RAPE

It is the premise of the discussion of the "legitimate victim" that rape must not be considered to be a purely, psychologically motivated act, but must also be seen within its social context. The social-sexual relations which legitimize the black female victims and a review of the laws provide an understanding of the social context.

Social-sexual relations which legitimized the black female as victim and the black male as perpetrator:

To understand attitudes about race and rape which contributed to the legitimation of black females as victims and the focus on black males as perpetrators, it is necessary to examine the early social and sexual relations of the races. We will examine how the myth of black male hyper-sexuality and sexual interest in white females developed during the period of slavery and suggest that it remains with society today.[86] We will also examine myths about black and white female sexuality.

As slaves, black women were sexually accessible to both black and white males. Black men and white women were limited to their own races in sexual choices. The white male prohibited black males and white females access to each other. The white male by virtue of his social position had access to both black and white women. This "sexual gain," as Dollard[37] describes it, is crucial to the relationships which developed. Historical analysis of race relations in the U.S. reveal that the black person was thought to be by nature a savage brute.[38] It was assumed that blacks were inherently disorderly and lacked elementary morals. There was even a racist theory promulgated to reinforce the placement of blacks and whites in different categories of humankind. This was the "Great Chain of Being Theory,"[39] the basis for early views on black sexuality. According to this theory, in nature there was an ordered hierarchy of sexual aggressiveness. The hypothesis was that whites were at the top of this chain and blacks below them, closer to the orangutan. It was believed that male occupants of each level of the chain sought females of the level above them as a means of "moving up the chain." It was argued, therefore, that the black male preferred white women as a way of "moving up the chain."[40]

In a review of segregationist thought Newby[41] reveals that the specter of omnipotent black sexuality obsessed some white men at the time of slavery and this is still present for some today.[42] Black males were viewed as especially virile and capable in the sexual sphere. Their sexual appetites were seen as more vigorous and ungoverned. There was widespread belief that the penis of the black male was larger than that of the white male.[43] Therefore, it was believed, sexual contact between a

black male and white female would be especially, physically dangerous to the female.

There also developed many myths about black female sexuality. Black women were seen by whites as highly sexed, invariably welcoming coitus, especially with white men. It was believed that black women never withheld consent in a sexual encounter. Kovel** contends that the male became preoccupied with black females who were alleged to be more passionate than white females who were tied to the pedestal of chastity and virtue.

In general, then, both male and female blacks were seen as sexually active and promiscuous. The black person was viewed as lacking any idea of morality, lacking a moral instinct. The black individual was reportedly subject to overpowering instincts and was characterized as being sexually immoral. Statements such as "There are no chaste Negroes over 15." and "all the (black) women are prostitutes...it is in their nature,"** were frequently and openly declared.

During this period the placement of the white female on a pedestal reached staggering intensity in the Southern United States, according to Kovel. The following example illustrates the status of the white female in the U.S. South. In Carmer's book Stars Fell on Alabama** a ritual performed at the University of Alabama during dance intermissions is described:

> The lights would be lowered and flaming torches marched in by young men. The leader would raise his glass (ice water) in toast, "To women, lovely women of the Southland, as pure and as chaste as this sparkling water, as cold as this gleaming ice, we lift this cup and we pledge our hearts and our lives to the protection of her virtue and chastity." **

Historians contend that slavery undoubtedly impacted on to the positioning of the white female. Her identification became one with the notion of "The South" itself. According to William Cash,** the Southern white female's status was caused by the tendency to focus upon her as the perpetuator of the "superior white race." This reinforced an absolute taboo on any sexual approach to her by a "Negro." And, any attempt by a black male to intimate equality was an attack on "Southern Womanhood" as surely as if she was actually violated. Rape of the white woman by the black man was seen as the most horrible of crimes, justifying the most brutal punishment imaginable.

Fears of black sexual aggression were exacerbated especially at times of interracial crisis or when a black conspiracy or uprising was rumored. As Jordan reports, any act of insurrection or independence by blacks were seen as sexually motivated. This fear of black sexual aggression functioned to justify violence against blacks.

For the white male to have sexual interest in the black female, however, was not taboo. And, rape of the black female functioned to prove continued mastery of the white over black. Although a "defiling of the races" (mixing) when the male was white and the female black was verbally deplored, it was not treated with any of the severity associated with any interaction between white females and black males.** The black female was subjected to repeated sexual assault by white men, and although there was some active resistance on the part of black women,[70] the laws did not protect them. The master society values and norms, in fact, encouraged the behavior of the white males. White men of every social rank had sexual access to the black women.[71] (Bell p. 258). Slave women were

frequently the first sexual partner of white males. According to Kovel[72] white males were preoccupied with the bodies of black females. But it is clear that the black female wasn't valued, she was viewed as a depreciated sexual object who served as the recipient of certain "debased passions of men who were ashamed to act them out otherwise."[73] The black female, due to her slave status, was accessible to white males and could be the target of sexual activity that Calvinist training, prohibited males to direct at white females. But this was not the primary reason for her victimization. According to Steeber:

> black women during and after slavery were an economically depressed group subject to the domination of the white caste and thus in a powerless position. They were sexually available to the master class (white men) who did not concern themselves with responsibility for the women's welfare...When any group of women are in this subordinate position, they suffer sexual abuse from the dominant males.[74]

This social-sexual explanation of the view of black and white sexuality appears to be a tenable one, and one which is useful to understanding current attitudes regarding blacks and rape.

With the abolition of slavery and with the changes which have occurred over the past century one might expect these relations to have changed. A comment reported to this researcher provides a notion of the pervasiveness and continuance of these myths about race, sex and rape. A detective in the a northern city in 1978 expressed the view that, "Rape doesn't bother Negro women as much as it does white." After being challenged on this view he replied "Well, I don't mean there's an inborn difference or anything like that, but the way Negroes live is different. They have no family life. They are all out having sex from the time they are thirteen. Sex just comes naturally." A senior court clerk verified

that this was the perspective of many, volunteering that the view among most of the courthouse is that "blacks want 'it' (sexual relations) more and do 'it' more." Today the attitudes regarding black male and female sexuality which originated during the period of slavery are still found in the minds of those in positions of power in the criminal justice system.

The Law, Race and Rape

Historically, the U.S. legal system[78] has made a distinction between rapes committed by blacks and rapes committed by whites. Protection for black victims and white victims were also legally distinct.

The briefs offered in Furman v. Georgia[79] include a history of Pre-Civil War punishments for rape in Southern States and Washington D.C. The appendix to the Furman v. Georgia briefs includes statutes for sixteen states, fifteen of which had separate penal codes for free persons and for slaves. In eight of these jurisdictions rape committed by a white male was not punishable by death but death was mandatory for cases of rape or attempted rape of a white woman by a black man (Alabama, Washington D.C., Georgia, Kentucky, Mississippi, Tennessee, Texas and Virginia). In Louisiana and Maryland the white male rapist could receive life imprisonment in lieu of the death sentence, while in the case of a black male the death penalty was mandatory for the crime of rape or attempted rape upon a white woman. In Missouri the punishment for a black was castration. In eleven jurisdictions, (Arkansas, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas), laws against attempted rape of a white woman were included and this offense was punishable by death if committed

by a slave but was assigned a lesser penalty if committed by a white male. In both Missouri and Virginia castration was the penalty for attempted rape of a white woman by a black man. In every jurisdiction except the District of Columbia and Mississippi, the statutes imposing more severe penalties applied also to free persons of color.

The severity of the rape was reduced, however, when it was committed against a slave. In Georgia it was stipulated that rape upon a slave or free person of color was punishable by fine and imprisonment at the discretion of the court. Georgia was the only state which specifically set forth this lesser penalty for rape of a black female. In other states, the absence of mention of female slaves and free females of color in the sections regarding black offenders, however, is conspicuous. It is clear that rape of a slave or of a free black by a slave or a free black was not punishable by law. The statutes applying to white offenders did not specify race or status of the victim. However, it is unlikely that a black or slave victim could bring charges against a white offender as blacks or slaves were restricted from testifying and had no legal status as legitimate complainants. According to Wright[77] in most Southern States a black could not testify against a white man even on his own behalf.

These statutes reflected the beliefs of the law makers (white, males) that not only was there a differential in harm when rape was committed by a white male versus when it was committed by a black male, but that the sexual assault of a black female was not a crime.

In contrast, the crime of rape committed by a black man against a white woman was seen as the most serious affront, often resulting in the death penalty for the black male. Courts, however, were reluctant to

interfere with the property of the masters. Penalties for slaves, particularly the death penalty, were costly to the owners and, therefore, frequently the master would intervene to protect his own interests."[78] Masters could attempt to prevent losses their "property" by concealing crimes or taking the law into their own hands. "[79]

These laws reflect the legal status of blacks as property accessible to the white male. John Hope Franklin explains that the rape of a female slave was regarded as a crime only to the extent that it involved the trespassing on and destroying of the property of the owner."[80] Otherwise, sexual access to black females served to reinforce her status as slave and the powerlessness of the black male to change this status.

The residual impact of racist laws on response to race and rape:

After emancipation of the slaves many of the states changed their statutes in a manner similar to the Missouri State Statute 43 of 1870:

> No Negro or Mulatto shall be subjected to any other or different punishment for an offense against any law of this state than such as would be inflicted upon a white person convicted of a like offense.

Although freedom for the slave changed the criminal laws, change in actual application of the criminal law did not always follow. After emancipation of the slaves there was fear on the part of the Southern whites that reconstruction in the South and liberation in the North would teach the black that he was equal to the white and that blacks would assert their equality not only economically but socially and sexually via the rape of white women."[81] And, there was the fear that black women would move out of their position of sexual subservience.

In order to maintain the status quo and due to the absence of extensive and institutionalized law enforcement,[82] white men frequently took the law into their own hands. Baughman[83] reports that after the Civil War, with the formation of the Ku Klux Klan in 1865 in Pulaski, Tennessee, the number of lynchings increased. In 1873-75, 26 blacks were lynched for rape and four for attempted rape. Six were "legally" executed. Of the 3,383 blacks lynched during the period 1882-1936, 32.3% were accused of raping white women (none were lynched for raping black women).[84] Few whites were lynched.[85]

Even when the legal system had opportunity to intervene the courts often reflected prejudices against black offenders and victims that were once rooted in the laws. In Jackson v. State of Georgia[86] the crime with which Jackson (a black man) was charged was attempted rape (against a white woman). In the definition of attempted rape actual touching of the alleged victim was not necessary to obtain a conviction. Intent had to be shown but the defendant needed only to be within "striking distance" for the determination of attempted rape. The racism which pervaded evidentiary requirements for substantiating the charge of rape is revealed when one examines the way in which the court charged the jury upon the question of intent:

> social customs, founded on race differences, and the fact that the defendant is a negro and the female a white may be taken into consideration." [87]

In other words, it was assumed that there would be no cause for confrontation of a white female by a black male unless there was the intent to rape. In Virginia attempted rape of a white by a black was considered as heinous as the actual rape. There was even a statute on

record proscribing "attempt to commit an assault with intent to rape."[88] As late as 1951 in Alabama a black man was convicted of an attempt to commit an assault with intent to rape. This "attempt to attempt to rape" occurred when a black male stood within 6 feet of a white woman who then retreated to her home. His only action was to stand on the sidewalk outside her home for 30 minutes.[89]

This indicates that the legislators and judiciary saw every attempted contact with a white female by a black male as a rape, rape attempt, or "attempt to attempt" rape.

In contrast, there is little historical evidence of cases where either white men or black men were charged with raping, attempting to rape, or attempting to attempt to rape black women. This reflects the proposition that black women cannot be raped. Based on this written historical evidence one can only assume that if punished at all for rape of a black female such punishment was infrequent or handled extra-legally.

The contrast of penalties set forth for the rape of white women; the total disregard of rape of black women; the hiatus in our understanding of this crime reflected by absence of information on the rape of black women in history books and journals (despite slave narratives of the 19th century which do contain accounts of slave women's sexual victimization at the hands of masters and overseers[90]), all point to the discrimination against black women in regard to the crime of rape.

Today the racial discrimination is removed per se from the actual leges, that is the public statutes, codes and ordinances. It is the procedures for administration which are subject to the influence of race discrimination. These include many points of decisionmaking which follow

the commission of a crime and are prior to submission of evidence to the court including:

1. the police decision to record or not to record a complaint

2. the police decision to record or not to record the complaint as "founded"

3. the decision to actively investigate the complaint and make an arrest

4. the prosecutor's decision of which charges will be filed

5. the decision on bail set for each defendant (this has an impact on the defendant's ability to prepare a defense and also to apply pressure on the complainant to withdraw a complaint)

6. the prosecutor's decision to enter into or not enter into plea-bargaining and/or to accept a plea of guilty to a lesser offense.

A few examples, from cases which occurred in the recent past demonstrate the continuing influence of myths about race, sex and rape on these procedures:

> James Hollis (Black) February 3, 1957. Griffin, Georgia. The 17 year old boy was slain and a white housewife wounded by a husband who found them together, partially clothed, in his home. A grand jury failed to indict the husband."[1]

> In a southern state in the 1960's, one Negro defendant, accused of raping a white woman received the death sentence in the same courtroom in which three months before, a white man had received a 5 year sentence for raping an 11 year old black girl."[2]

> Andrew Lee Anderson (Black) July 17, 1963. Near Marion, Ark. Slain by a group of white citizens and deputies after white woman said he had molested her 8 year old daughter. Coroner's jury ruled justifiable homicide. No arrests were made. "[3]

> A black woman complained to the police in a northern city that she was raped by two black men, one of whom she once dated. The police told the victim they thought she was lying - complaint unfounded."[4]

A black defendant raped an unmarried black woman at knife point threatening to retaliate against the woman's 5 year old son if she reports the incident. After she makes a complaint, he is permitted to plead guilty to breaking and entering."[95]

A black woman reports being raped by a white male after a party at a neighborhood tavern. The woman is arrested for possession of a switchblade. "[96]

Many scholars have studied and written about the double standard of justice as it is applied to different races in recent times."[97] A study conducted by Marvin E. Wolfgang"[98] examined the imposition of the death penalty on convicted rapists in eleven southern and border states. In six states the research findings were presented as evidence to support petitioner's claims of racial discrimination in the administration of the death penalty. The study demonstrated that the death penalty was disproportionately frequently given to blacks for the crime of rape. Further, when the race of the victim was examined it was found that "a statistically significantly higher proportion of black defendants whose victims were white were sentenced to death."[99] In fact "black defendants whose victims were white were sentenced to death approximately eighteen times more frequently than defendants in any other racial combination of defendant and victim." [100] Anthony Lester reported in 1964 that, "Rape is a capital offense in all Southern States, but no white has ever been executed for raping a Negro woman," and "in Louisiana from 1900-1950 no one, Negro or white, was executed for raping a Negro female."[101] These findings have great significance not only in relation to the black defendant, but point up, significantly, the discrimination against the black victim of rape. When black men or white men rape black women the crime, if indeed there is a conviction, is judged to be less serious.

Another example illustrates the continued impact of the myths and earlier laws on criminal justice system response. In Philadelphia in 1973-75 the criminal justice system's response to 1,198 rape cases was studied.[102] Of these 1,198 rapes, 29 cases (2.4%) were interracial rapes where the offender was white and the victim was black. While 26% of all rape cases resulted in prosecution in the Philadelphia courts (at least to the level of preliminary hearing) none of the cases of white on black interracial rape resulted in prosecution (see Table 1). This difference in rate of prosecution of white on black interracial rape cases compared to all other rapes is statistically significant at $p < .01$ level.

Insert Table 1 here

CONCLUSION

It is the thesis of this paper that because of the long standing view of black female sexuality and the historical lack of legal protection of the black female, the black victim is viewed by both rapists and the society as a legitimate victim. That is, she is legitimized as a target for sexual attacks. The black woman, who becomes the "legitimate victim" as a result of the stereotypes which had their early origins in slavery, is denied full protection of the law.

Caution must be exercised in interpretative analysis of a cultural theory of race and rape. However, corollary propositions are offered here for purposes of future examination and testing.

1. Black females in proportion to their representation in the population are more likely to be victims of sexual assault than whites.

2. The proportion of black females who are victims of interracial rape are dramatically underreported.

3. The black victim is more often subjected to intensive questioning by the police.

4. The complaints of black victims are more often unfounded than are those of white victims.

5. The charges against the black woman's offenders are more likely to be reduced.

6. The rape of a black woman is treated with less seriousness and severity in the courts.

There is a need to develop a model for understanding all categories of race and rape-- white/white, white/black, black/white, black/black-- because different motivational, situational, and social-political factors will affect each category.

But, further exploration of how slavery impacted on sexual victimization of black females has implications not only for those interested in race and race relations. If we accept Lerner's[103] thesis that the oppression of women antedates slavery and makes it possible (p.77) and that, in the patriarchal system, women's (all women's) sexuality becomes a commodity, then understanding how the institution of slavery impacted on black females sheds light on the status of all women. Although white women have not (in the U.S.) been subject as a group to the brutalization of slavery, patriarchy legitimizes their victimization as well.

TABLE I
Prosecution of white men who raped black women in Philadelphia 1973-75: A comparison to all other rape cases.

	Racial Characteristics of Rape		
	B-B, W-W, and B-W Rapes	W-B Interracial Rape	Total
Prosecution in Court	312 (26.7%)	0 (0%)	312 (26%)
No Prosecution	857 (73.3%)	29 (100%)	886 (74%)
Total	1,169 (100%) (97.6%)	29 (100%) (2.4%)	1,198 (100%) (100%)

Chi Square= 10.57 with 1 df
significant at p< .01 level

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